

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-54-C - ORDER NO. 2004-312
JUNE 30, 2004

IN RE: Application of COMTECH 21, LLC for a)	ORDER GRANTING
Certificate of Public Convenience and Necessity)	CERTIFICATE AND
to Provide Resold and Facilities Based/UNE-P)	FLEXIBLE
Local Exchange Telecommunications Services)	REGULATION AND
and for Flexible Regulation.)	MOTION FOR
)	EXPEDITED REVIEW

This matter comes before the South Carolina Public Service Commission (the “Commission”) by way of the Application of COMTECH 21, LLC (“Applicant” or “COMTECH”) for authority to provide resold local exchange telecommunications services in South Carolina in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C.

By letter, the Commission’s Executive Director instructed the Applicant to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of this Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Applicant complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition (“SCTC”).

Counsel for SCTC filed with the Commission a Stipulation in which the Applicant stipulated that it would not seek authority in non-rural local exchange (“LEC”)

service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until COMTECH provided written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. The Company also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. The Applicant agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to COMTECH provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

On April 20, 2004, COMTECH filed the prefiled testimony of its Vice-President, Marie Marcarelli, in support of its Application. Subsequently, on May 27, 2004, the Applicant filed with the Commission a Motion for Expedited Review. In support of the Motion, COMTECH showed that it is already certificated by the Commission by Order No. 2001-266 in Docket No. 2000-306-C to provide long distance telecommunications services with alternative regulation in South Carolina.

The testimony of Ms. Marcarelli established that the Company is a Delaware Limited Liability company authorized to transact business in South Carolina by the South Carolina Secretary of State and licensed by this Commission for the sale of long distance services. COMTECH now requests to be permitted to offer for sale in South Carolina a full array of local exchange services for both business and residential customers.

Included in these proposed offerings are local exchange services for business and residential customers, switched local exchange services, private line services, Centrex or Centrex-like services, and Digital subscriber line and other high capacity services. COMTECH intends to initially resell local exchange services through the use of unbundled network elements primarily in the BellSouth areas of the state. COMTECH may, at some later date, install facilities in South Carolina.

Ms. Marcarelli further testified that COMTECH intends to offer its services on a twenty-four hour a day, seven day a week basis. The Applicant will further provide access to local operators, directory assistance, 911 service, and dual relay service. She testified that the Applicant agrees to collect 911 and dual relay service surcharges and to submit such funds to the appropriate authorities. The financial status of COMTECH is strong and evidences the Applicant's fitness for providing the services for which it seeks authority. The testimony further reveals that COMTECH is licensed to provide local service in 24 states and is applying in the remainder of the United States. COMTECH intends to directly market its services in South Carolina through its employees and agrees to provide and market its services in compliance with current Commission policies. In particular, Ms. Marcarelli testified that COMTECH is familiar with Commission Order No. 93-462 regarding resale of intraLATA telecommunications services and will attempt to comply with the terms of that Order in every respect possible. Ms. Marcarelli stated that at all times the Applicant will provide interstate services in compliance with the FCC rules and regulations.

COMTECH has requested waivers of certain Commission rules and regulations. Specifically, COMTECH has requested a waiver of 26 S.C. Code Regs. 103-631 which requires local telephone service providers to publish and distribute a local telephone directory. COMTECH has additionally requested a waiver of 26 S.C. Code Regs. 103-611, which requires the Company to keep its books and accounts in accordance with the Uniform System of Accounts, and asked permission of this Commission to keep such records in conformance with Generally Accepted Accounting Principles (GAAP). Finally, COMTECH has requested waiver of the requirement under 26 S.C. Code Regs. 103-612.2.3 that it file maps of its service area with the Commission. COMTECH explains that as it will be offering service only within the geographic service areas of incumbent LECs that service area maps and directories should be viewed by the Commission as unnecessary.

Ms. Marcarelli testified that South Carolinians will benefit from COMTECH's services and presence in South Carolina. The testimony reveals that potential customers in COMTECH's service area will receive increased choice and heightened opportunities to obtain improved technology in their homes and businesses. Further, Ms. Marcarelli opined that the granting of the certificate of authority to provide local exchange service will offer increased efficiency to the State's telecommunications infrastructure through greater reliability of services and an increase in competitive choices. The testimony reveals that COMTECH's applications to provide telecommunications services in other jurisdictions has never been denied and that COMTECH has never been fined or investigated in the jurisdictions in which it is currently doing business. Further, the

COMTECH agrees to abide by and comply with the Commission's rules, regulations, and Orders.

After full consideration of the applicable law, COMTECH's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. COMTECH is a Delaware limited liability corporation authorized by the South Carolina Secretary of State to do business in the State of South Carolina and currently licensed for the resale of interexchange services by this Commission under Order No. 2001-266.

2. COMTECH wishes to expand its service offerings in South Carolina by offering local exchange telecommunications services.

3. As evidenced by the testimony of its Vice President, Marie Marcarelli, and the documents filed with this Commission, COMTECH possesses the technical and managerial expertise and financial resources to commence operations as a telecommunications service provider in South Carolina.

4. We find that COMTECH's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2003).

5. We find based on the testimony and documents in the record in this case that COMTECH will support universally available telephone service at affordable rates.

6. We further find that based on the technical and managerial expertise of its officers and employees, as evidenced by the testimony and documents in the record in this case, that COMTECH has the capability to provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by COMTECH will not “adversely impact the public interest.” S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2003).

8. We find that the issuance of the authority requested by COMTECH is in the best interests of the citizens of the State of South Carolina.

9. We find that on the basis of its current certification issued under Commission Order No. 2001-266 and the withdrawal of opposition to the Application by the SCTC in this matter, that COMTECH’s Motion for Expedited Review should be granted.

CONCLUSIONS OF LAW

1. The Commission concludes that COMTECH possesses the managerial, technical, and financial resources to provide the competitive local exchange telecommunications services as described in its application.

2. The Commission concludes that COMTECH’s “provision of service will not adversely impact the availability of affordable local exchange service.”

3. The Commission concludes that COMTECH will participate in the support of universally available telephone service at affordable rates to the extent that COMTECH may be required to do so by the Commission.

4. The Commission concludes that COMTECH will provide services which will meet the service standards of the Commission.

5. The Commission concludes that the provision of local exchange service by COMTECH does not, and will not otherwise, adversely impact the public interest.

6. The Commission concludes that approval of COMTECH's Application to provide local exchange telecommunications services within South Carolina will serve the public interest by enhancing competition in the State by offering additional service offerings to South Carolina's consumers and by providing for efficient use of existing telecommunications resources.

7. The Commission concludes that the issuance of the authority to provide local exchange telecommunications services and intrastate interexchange telecommunications services as requested by COMTECH, and as set forth in its Application, is in the best interests of the citizens of the State of South Carolina.

8. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to COMTECH to provide competitive intrastate resold and non-rural local exchange service in South Carolina. The terms of the Stipulation between COMTECH and the SCTC are approved, and adopted as a part of this Order. Any proposal to provide such service to rural service areas is subject to the terms of the Stipulation.

9. The Commission concludes that COMTECH's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165

in Docket No. 97-467-C. Specifically, the Commission adopts for COMTECH's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, COMTECH's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

10. COMTECH requests an exemption from the requirement that the Company to keep its financial records in accordance with the Uniforms System of Accounts. COMTECH currently maintains all of its accounts in accordance with Generally Accepted Accounting Principles ("GAAP") for all of its interstate operations. In order to provide for the efficient operation of the Company's business, the Commission approves a waiver and hereby permits the Company to maintain its records in accordance with GAAP. The Company is, however, required to record and maintain records specific to its business operations in the State of South Carolina and to make such records available for inspection by employees of this Commission.

11. COMTECH additionally requests a waiver of 26 S.C. Code Regs.103-631 to publish and distribute local directories. COMTECH will act as a reseller in South Carolina and has agree to make arrangements with the incumbent LECs in the areas where the Company will do business to arrange for the publication of its customers

numbers in those LEC's telephone directories. On this basis that Commission concludes that COMTECH should be granted this requested waiver.

12. COMTECH further requests a waiver of 26 S.C. Code Regs.103-610 which requires that the Company keep its books and records in the State of South Carolina. As COMTECH's headquarters and principle place of business is located in Wallingford, Connecticut, the Commission concludes that an exemption from the Regulation is warranted. COMTECH shall, however, make its books and records available for inspection by the Commission and shall bear any cost associated with such an inspection as a result of the Company being permitted to maintain its books and records in Connecticut.

13. COMTECH also requests that it be exempt from the map filing requirement under 26 S.C. Code Regs.103-612.2.3. Because the Applicant will operate as a reseller in South Carolina, the Commission concludes that this request is warranted and hereby grants the Companies request.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity is granted to COMTECH to provide competitive intrastate local exchange telecommunications services, including optional services, via resale or the leasing of unbundled network elements including UNE-P, from incumbent local exchange carriers. COMTECH's local exchange service offerings shall be provided in compliance with the Stipulation between COMTECH and the SCTC.

2. The terms of the Stipulation between COMTECH and the SCTC are approved and adopted as a part of this Order. The Stipulation is attached to this Order as Exhibit 1 and is hereby incorporated as a part of this Order. Any proposal to provide competitive intrastate local exchange telecommunications services to rural service areas is subject to the terms of this Stipulation.

3. COMTECH shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. COMTECH' local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for COMTECH's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, COMTECH's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

4. COMTECH shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and

repairs. In addition, COMTECH shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

COMTECH shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The Company shall utilize the “Authorized Utility Representative Information” form which can be located at the Commission’s website at www.psc.state.sc.us/reference/forms.asp to file the names of these representatives with the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

5. COMTECH shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

6. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911 system” or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs COMTECH to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before providing voice or dial tone telephone service in South Carolina. Accompanying this Order is an

information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing voice or dial-tone services within South Carolina, COMTECH shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

7. COMTECH is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

8. COMTECH shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts reports will necessitate the filing of intrastate information. Therefore, COMTECH shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission’s requirements of filing an annual report and a gross receipts report. The proper form for filing annual financial information for the annual report may be found on the Commission’s website at www.psc.state.sc.us/reference/forms.asp . The title of this form is “Annual Report for CLECs” and/or “Annual Report for Interexchange Companies.” The Company shall file the annual report form with the Commission by April 1st of each year.

Commission gross receipts forms are due to be filed with the Commission no later than August 31st of each year. The appropriate form for remitting information for gross

receipts is entitled “Gross Receipts Form for Utility Companies” and may also be found on the Commission’s website at www.psc.state.sc.us/reference/forms.asp.

Additionally, pursuant to the Commission’s regulations, the Company shall file a “CLEC Service Quality Quarterly Report” with the Commission. The proper form for this report can be found at the Commission’s website at www.psc.state.sc.us/reference/forms.asp.

9. The Federal Communications Commission (FCC) in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2002, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to their assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 1, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. This Company must comply with the applicable mandates. For complete information on compliance with this FCC and Commission requirement, go to the Commission’s website at www.psc.state.sc.us/reference/forms.asp.

10. For good cause shown, COMTECH is granted a waiver and is hereby authorized to keep its books and financial records in accordance with Generally Accepted Accounting Practices rather than the Uniform System of Accounts method.

11. For good cause shown, COMTECH is granted a waiver of the requirements that the Company publish and distribute a directory under S.C. Code Ann. Regs. 103-631 and that it file service area maps with the Commission. COMTECH is ordered to contact the incumbent ILECs to ensure that the Company's customers are included in the applicable directory.

12. For good cause shown, COMTECH is granted a waiver of the requirement that it file maps of exchange service areas under 26 S.C. Code Regs. 103-612.2.3.

13. For good cause shown, COMTECH is granted a waiver of the requirement that it maintain its books and records in South Carolina as required by 26 S.C. Code Regs. 103-610.

14. For good cause shown, COMTECH's Motion for Expedited Review is granted.

15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Mignon L. Clyburn, Chairman

ATTEST:

/s/
Bruce F. Duke, Executive Director

(SEAL)